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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,059	09/23/2003	Victor Schoenle	10527-477001	2738
26161	7590	07/05/2006		
FISH & RICHARDSON PC			EXAMINER	
P.O. BOX 1022			AUGHENBAUGH, WALTER	
MINNEAPOLIS, MN 55440-1022				
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/669,059

Applicant(s)

SCHOENLE ET AL.

Examiner

Walter B. Aughenbaugh

Art Unit

1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) The period for reply expires 3 months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- (a) They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) They raise the issue of new matter (see NOTE below);
- (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see continuation sheet. (See 37 CFR 1.116 and 41.33(a)).

- 4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
- 5. Applicant's reply has overcome the following rejection(s): _____.
- 6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- 7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 74,76-84,86-92,94-104,106-118 and 120-139.

Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

- 8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
- 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
- 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

- 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
- 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
- 13. Other: _____.

ADVISORY ACTION

Acknowledgement of Applicant's Amendments

1. The After Final Amendment filed June 16, 2006 has not been entered because the replacement of “polyester” with --polyamide-- in claims 74, 78-80, 82-84, 88, 89, 91, 92, 96-99, 101-104, 108-112, 114-118, 122-125 and 127-139 raises new issues that would require further consideration and search since polyamide is a different type of polymer from polyester and polyamide has not been previously recited in any of the claims.

Response to Arguments

2. Applicant’s arguments presented on pages 10-12 of the After Final Amdt. regarding the 35 U.S.C. 112, first paragraph, rejection of claims 74-129 have been fully considered but are not persuasive.

Applicant’s statements in the second paragraph under the “Claim rejections...” heading on page 10 of the After Final Amdt. regarding the “exemplary processes” disclosed in the specification do not address the basis for the rejection of record. The specification does not indicate which polyesters listed in the paragraph bridging pages 12 and 13 of the specification satisfy which of the various mechanical property requirements listed on pages 2-5 of the specification.

Applicant’s arguments regarding polyamides on pages 10-11 of the After Final Amdt. are moot since the After Final Amdt. has not been entered for the reason provided above.

In regard to the additional basis for rejection of claims 92-103, 111, 117, Applicant does not explain in the specification how the claimed “load at break ratio” is determined. The “load at break ratio” is mentioned only on pages 2 and 5 of the specification. While the method of

determining all other claimed properties are disclosed on pages 10-12, 14, 15 and 24-26, the method of determining the claimed “load at break ratio” is not disclosed. Applicant’s statement that “Applicants believe that, after reading the application, one skilled in the art would understand what is meant by this term” (third full paragraph, page 11 of After Final Amdt.) is unsupported. Applicant’s statement under the second block quote on page 12 of After Final Amdt. that “it is apparent that one skilled in the art would understand... extruded tube)” is unsupported.

3. Applicant’s argument presented on page 12 of the After Final Amdt. regarding the 35 U.S.C. 112, second paragraph, rejection is moot since the After Final Amdt. has not been entered for the reasons provided above.

4. Applicant’s arguments presented on pages 12-13 of the After Final Amdt. regarding the 35 U.S.C. 102 rejections are moot since the arguments depend upon the amendments made in the claims in the After Final Amdt., which have not been entered for the reason provided above. Applicant’s arguments presented on pages 13-14 of the After Final Amdt. regarding the 35 U.S.C. 103 rejections are moot since the arguments depend upon the amendments made in the claims in the After Final Amdt., which have not been entered for the reason provided above.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh
06/28/06

WBA


HAROLD PYON
SUPERVISORY PATENT EXAMINER

1772

6/29/03